

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 249 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes.

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

STATE OF GUJARAT

Versus

SATAPALSINGH AJITSINGH

Appearance:

PUBLIC PROSECUTOR for Petitioner

SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 24/04/97

ORAL JUDGEMENT

State of Gujarat has come in revision
against the order passed by the Chief Judicial
Magistrate, Jamnagar in cri. case no. 2071/89 dated
26.4.90 by which he quashed the cri. case no. 2071/89
which was registered on the strength of charge sheet
filed by the police.

2. It seems that security officer of Jamnagar Nagar
Palika was obstructed when he was in discharge of his

duties as public servant. He therefore, went to the police station and lodged a complaint against the respondents of this proceedings by alleging that they had obstructed him in discharge of his duties as a public servant and they had also abused him. The police registered an offence under sections 186 and 504 IPC and carried out investigation and sent a charge sheet against the present respondents. On the strength of the said charge sheet cri. case no. 2071/89 was registered against present respondents.

3. The respondent gave an application on 17.1.90 raising a contention that in view of the provisions of section 195 Cr.P.C. the court cannot take cognizance of the offence lodged against the respondent-original accused as the complaint was not lodged before the court by the complainant the public servant. The learned Chief Judicial Magistrate accepted the said contention by putting reliance on the decision of the learned single Judge of this Court given in Misc. Cri.Application No. 1631/83 on 29.9.84 and allowed the said application and quashed the said proceedings.

4. In Misc.Cri.Application No. 1631/83 this court has taken the view that in view of the mandatory provisions of section 195 Cr.P.C. even if the offence punishable under section 186 IPC has been declared as a cognizable offence the court cannot take cognizance of the said offence unless the public servant himself comes before the court and lodges a complaint. Thus the view taken by this court in the said proceedings is squarely covering the issue involved in this case and the learned Chief Judicial Magistrate was justified in allowing the application filed by the respondent and quashing the proceedings. But one thing is quite clear that the learned Chief

Judicial Magistrate ought to have observed

in his order that though he was quashing the proceedings in view of the provisions of section 195, it is open for the public servant to lodge a complaint before him as provided by section 195 Cr.P.C. This position ought to have been made quite clear to the complainant while quashing the proceedings in view of the provisions of section 195 Cr.P.C. Therefore, though I reject this revision application, I would like to observe in this judgment that it is open for the public servant to lodge a complaint as provided by section 195 Cr.P.C. as the quashing of the proceedings is done only on the ground of non lodging of the complaint by the public servant as per the the provision of section 195 Cr.P.C. Such quashing would not affect the right of the complainant to lodge a

complaint as provided by section 195 Cr.P.C. The
application is therefore, rejected. Rule discharged.

(S.D.Pandit.J)